Les Cahiers de droit

NICHOLAS KASIRER (dir.), *Le droit civil, avant tout un style ?*, Montréal, Les Éditions Thémis, 2003, 228 p., ISBN 2-894000-180-0.

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Volume 45, numéro 4, 2004

URI : https://id.erudit.org/iderudit/043820ar
DOI : https://doi.org/10.7202/043820ar

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Éditeur(s)

Faculté de droit de l'Université Laval

ISSN

0007-974X (imprimé)
1918-8218 (numérique)

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Citer ce compte rendu

Schwab, W. (2004). Compte rendu de [NICHOLAS KASIRER (dir.), *Le droit civil, avant tout un style ?*, Montréal, Les Éditions Thémis, 2003, 228 p., ISBN 2-894000-180-0.] *Les Cahiers de droit*, *45*(4), 828–830. https://doi.org/10.7202/043820ar

des pays à population musulmane passe par une nouvelle interprétation du Coran et de la Sunna permettant d'y voir le fondement de ces droits. Shabestari estime, quant à lui, impossible et inutile d'asseoir tous les droits de la personne sur les textes religieux. Ces droits sont indépendants de l'islam. Ils ne lui sont toutefois pas incompatibles puisqu'ils favorisent le développement d'une foi véritable.

Dans ce troisième chapitre, l'auteure procède par comparaison. Après avoir dégagé les lignes directrices des théories soutenues par chacun des auteurs, elle examine la façon dont chacun envisage la réconciliation de l'islam et des droits de la personne sur des questions très conflictuelles : la liberté religieuse, l'égalité des sexes et l'interdiction de la torture.

De manière générale, les deux premiers chapitres témoignent d'une excellente compréhension des problèmes qui se posent dans les États qui combinent l'engagement envers les droits de la personne et un attachement à l'ordre historique de la Charia, mais le troisième prête davantage le flanc à la critique. Sur le fond, il aurait été souhaitable que le travail de l'auteure dans ce dernier chapitre soit plus analytique et critique à l'endroit de la pensée musulmane moderniste. Sur le plan de la forme, l'existence de ce même chapitre est douteuse : l'auteure aurait pu intégrer la démonstration de l'émergence d'une nouvelle vision de l'islam compatible avec les droits de la personne aux deux premières divisions de l'ouvrage.

Dans un tout autre ordre d'idées, il est probable qu'une rédaction différente de l'introduction de l'ouvrage aurait diminué les risques de confusion chez le lecteur. L'auteure néglige en effet de présenter d'entrée de jeu le fil conducteur de sa pensée. Cette difficulté ne doit toutefois pas décourager ceux qui s'intéressent aux droits et libertés de la personne de prendre connaissance du point de vue éclairé d'Amirmokri sur la situation qui prévaut actuellement dans les États musulmans. L'opinion défendue par l'auteure quant à la compatibilité de l'islam et des droits de la personne rejoint d'ailleurs la position adoptée par l'avocate iranienne Shirin Ebadi, lauréate du prix Nobel de la paix en 2003. Il aurait été intéressant que, à l'exemple de cette dernière, Amirmokri élargisse son questionnement et étudie dans son ouvrage les possibilités de concilier l'islam et la démocratie. L'auteure en touche un mot dans sa conclusion, mais le sujet aurait pu faire l'objet d'un plus long développement.

En conclusion, l'étude récente par Vida Amirmokri de la question complexe et très actuelle des rapports entre l'islam et les droits de la personne est approfondie et propice à alimenter les débats juridiques et idéologiques.

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Nicholas Kasirer (dir.), **Le droit civil, avant tout un style ?**, Montréal, Les Éditions Thémis, 2003, 228 p., ISBN 2-894000-180-0.

"Language shapes the way we think, and determines what we can think about."
Benjamin Lee Whorf

From the very title, "Le droit civil, avant tout un style ?", Professor Kasirer begins with a rhetorical question borrowed from the renown jurist René David, which in turn will lead the reader to scientific evidence extending far beyond the Professor's and Monsieur David's ambitions and goals. The crux of this entire study may be summed up as such : What bearing, if any, may legal prose in a given system of law have on legal substance and its effects as conveyed by such prose ? While the answer is less than obvious, under Professor Kasirer's direction several outstanding legal scholars — nine in all — are brought together to share their thinking on an uncommon tact to the analysis of Civil law in its native environments. Beginning with the Professor's own "Portalis Now" to set the scene, here follows an outline of his and the other presentations.

True to form, Professor Kasirer empirically opens the debate with a commentary on his translation of the "Presentation to the

Legislative Body [For the Proposed Law Pertaining to Ownership, Being Title II, Book II of the Civil Code] And Explanatory Statements, Presented by Mr. Portalis". Through the prisms and mirrors of translation — conflicting or overlapping concepts and eternally incomplete lexical equivalents — the groundwork for his colleagues has been laid.

Jacques Auger describes the complementary relationship between the Civilist style and the law governing real securities. He takes the debate onto institutional grounds — a treasure trove for linguistic phenomena along with the social patterns issuing therefrom — and the geographic realities encountered when Civil law grows in a garden surrounded by Common law. Then, Pierre J. Dalphond moves the debate onto the turf of legal interpretation and how the courts and their judges come to terms with the finality of codified law within the context of never-ending case-law evolution.

From the preceding synchronicity, under the authorship of Christophe Jamin and Pierre-Yves Verkindt, the debate takes a diachronic turn by plunging into how exegesis of the rules of law has weathered the intellectual movements primarily of the 19th century (the historic method, the comparative method, and much more...), but with many references to other periods.

After this, in a quick look to the south of our border, Mitchel de S.-O.-L'E. Lasser provides a running parallel between "American Legal Realism" and the theories and practices on the European continent with interesting contrasts involving the positivist methodology current among American practitioners. Throughout, differential analyses between neighbouring systems abound.

The contribution of Pierre Legrand is a genuine surprise. He lifts the debate to the synaptic level of neurological considerations where fiction and reality join together in confusion, where the expression of French Civil law in all its forms is based upon neurotic organization. Outlandish might one say ? This psycho-linguistic and juridical incursion has only just begun !

In sharp contrast with the preceding, Marie José Longtin presents a tightly woven down-to-earth typology of the operations of the law, the code and the style. In her outspoken conclusion, she states that the codifying civilist approach to the law is one of balance, order and harmony that vary in proportion to circumstances. She sets the stage for even further comparisons and contrasts beyond the purview of this collective effort.

Adrian Popovici accuses. By highlighting a series of incoherencies in current day practices, often resulting in legal verbosity, he structures a vision that were it turned from the negative to the positive, would constitute an excellent précis of the best of civilist thinking.

To sum up the preceding, in a final chapter Daniel Jutras skilfully assumes an otherwise ungrateful task, which of course I shall sidestep.

Now considering the foregoing venture into the multiple views of stylistics and the Civil law, it is appropriate to expand this entire analysis to encompass an unplanned dimension of conceptualization by recalling the memory of American linguist and author Benjamin Lee Whorf[1] who, in the 1950s, unleashed among linguists worldwide a polemical tempest that persists until now. The storm he created may be deduced from the following quotations on language, words and culture.

> "Every language is a vast pattern-system, different from others, in which are culturally ordained the forms and categories by which the personality not only communicates, but also analyzes nature, notices or neglects types of relationship and phenomena, channels his reasoning, and builds the house of his consciousness. "[2]
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> "Every language contains terms that have come to attain cosmic scope of reference, that crystallize in themselves the basic pos-

1. B.L. Whorf, *Language, Thought, and Reality : Selected Writings*, Cambridge, Technology Press of Massachusetts Institute of Technology, New York, 1959.
2. *Ibid.*, 252.

> tulates of an unformulated philosophy, in which is couched the thought of a people, a culture, a civilization, even of an era. Such are our words 'reality, substance, matter, cause," and... 'space, time, past, present, future." [3]
>
> "'Common sense' is unaware that talking itself means using a complex cultural organization, just as it is unaware of cultural organizations in general. Sense or meaning does not result from words or morphemes but from patterned relations between words or morphemes."[4]

Legal thinking, be it civilian or otherwise, fits very comfortably into this Whorfian framework. It is noteworthy that over the years, Whorf has been copiously challenged by fellow linguists – sometimes hurtfully – for these and many other statements ; nonetheless, his views have weathered each storm and the tide is increasingly turning in his favour.

Professor Kasirer's work is more than ground-breaking legal scholarship ; it is a masterful compendium of empirical linguistic, legal and yes, scientific testimony to the solid foundations laid by Benjamin Lee, now over 50 years past. Might the linguistic community take note !

Wallace SCHWAB
Translator, linguist and writer

3. *Ibid.*, 61.
4. *Ibid.*, 67.